STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MILLARD HIGH,

Defendant-Appellant.

UNPUBLISHED
April 15, 2003

No. 239726
Wayne Circuit Court
LC No. 01-003160

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of unarmed robbery, MCL 750.530, and felonious assault, MCL 750.82, for which he was sentenced as an habitual offender, fourth offense, MCL 769.12, to prison terms of seven to twenty-five years and two to fifteen years, respectively. Defendant appeals as of right, and we affirm.

Defendant first contends that the evidence was insufficient to sustain the verdict as to unarmed robbery because any use of force was used to effect an escape and not to obtain the money from the victim. We disagree. A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman,* 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon,* 248 Mich App 522, 524; 640 NW2d 314 (2001). The trial court's factual findings are reviewed for clear error. *People v Gistover,* 189 Mich App 44, 46; 472 NW2d 27 (1991). A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *Id*.

The elements of unarmed robbery are "(1) the felonious taking of any property which may be the subject of larceny from the person or presence of the complainant, (2) by force and violence, assault or putting in fear, (3) while not armed with a dangerous weapon." *People v Spry,* 74 Mich App 584, 594; 254 NW2d 782 (1977). The force used to accomplish the taking underlying a charge of unarmed robbery must occur before or contemporaneously with the taking. The force used later to retain stolen property is not included. *People v Randolph,* 466 Mich 532, 546, 551; 648 NW2d 164 (2002). However, the force is contemporaneous with the taking if it occurs "immediately before or immediately after" the taking. *Id*. at 538 n 6.

In *Randolph, supra*, the defendant removed items from a Meijer store and concealed them under his coat. He proceeded to pay for two quarts of oil and exited the store without paying for a rotary tool, a battery charger, and a thermostat. Loss prevention staff attempted to apprehend the defendant when he exited the store. Thus, the first use of force or violence occurred in the parking lot when security attempted to restrain the defendant. *Id*. at 534, 547. In the instant case, the evidence showed that the complainant was standing in the gas station with $60 protruding from her hand. Defendant snatched the money from her hand and tried to leave with it. The complainant then tried to stop him, at which time he punched her. The force of violence utilized in the present case was not delayed until the defendant left the store, but was in proximity and instantaneous with the theft of the $60 inside the store. The force was contemporaneous because it occurred immediately after the taking. *Randolph, supra*. Viewing the evidence in the light most favorable to the prosecution, *Harmon, supra*, there was sufficient evidence to support the unarmed robbery conviction.

Defendant next contends that the evidence was insufficient to sustain the verdicts because he was so intoxicated that he could not have formed the specific intent to steal or to injure. We disagree. Larceny is a specific intent crime. *People v Ainsworth*, 197 Mich App 321, 324; 495 NW2d 177 (1992). It requires that the defendant take property with an intent to deprive the owner of it permanently. *People v Kyllonen*, 402 Mich 135, 148 n 14; 262 NW2d 2 (1978). Felonious assault is also a specific intent crime. It requires that the defendant act with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). The defendant's intent can be inferred from his words and conduct, as well as from facts and circumstances established beyond a reasonable doubt. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001); *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985). Intent can be proved by circumstantial evidence alone. *People v Perez-DeLeon*, 224 Mich App 43, 59; 568 NW2d 324 (1997). Voluntary intoxication is a defense to a specific intent crime "if the degree of intoxication is so great as to render the accused incapable of entertaining the intent." *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995).

Given that defendant grabbed the complainant's money from her hand, hit her to retain possession of it and then tried to flee with it, one could reasonably infer that he intended to deprive her of it permanently. Defendant said he would not let the responding officer arrest him and that he intentionally put his car in reverse and accelerated while the officer was reaching inside the car. The door struck the officer, and defendant drove the vehicle away, dragging the officer along the ground, ignoring his pleas to stop. Based on these facts, one could reasonably infer that he intended to injure him. Although defendant testified that he was extremely intoxicated at the time he committed the offenses, the court rejected his testimony as incredible. The factfinder, be it the judge or the jury, "may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict." *People v Cummings*, 139 Mich App 286, 293-294; 362 NW2d 252 (1984). Because the trial court is in the best position to judge credibility, this Court will not substitute its judgment for that of the trial court but will defer to the trial court's resolution of factual issues that involve the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993).

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood